

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,)
)
Plaintiff,) 8:09CR291
)
v.)
)
JOHN R. BRIASCO and CLAUDETTE) ORDER
A. TRAVER,)
)
Defendants.)
)

This matter is before the Court on the findings and recommendations of the magistrate judge (Filing No. 68), in which the magistrate judge recommends that defendant's motions to suppress (Filing Nos. 24 and 28) should be denied. The Court has reviewed the transcript of the evidence received by the magistrate judge, the statement of objections to the findings and recommendation (Filing No. 71) filed by defendant Briasco and supporting brief of that defendant (Filing No. 72), and has also reviewed *United States v. Lyons*, 486 F.3d 367 (8th Cir. 2007), and *United States v. \$404,905.00*, 182 F.3d 643 (8th Cir. 1999). The Court finds that the evidence establishes there was probable cause to stop the defendant's vehicle and that the officer reasonably had a suspicion of illegal activity.

Defendant Briasco also objects to the length of the stop, but this was necessitated primarily by the time it took to obtain a drug dog. The United States Court of Appeals for the Eighth Circuit has recognized in its prior holdings, a holding

period of fifty-nine minutes waiting for arrival of a drug dog and eighty minutes for the arrival of a drug dog were reasonable under the circumstances. The delay here was forty to forty-three minutes.

In view of the fact that the trooper had reasonable suspicion to hold defendants and the vehicle until a drug search could be conducted, the Court finds that the magistrate judge's findings and recommendations should be approved and adopted by the Court. Accordingly,

IT IS ORDERED:

- 1) The findings and recommendations of the magistrate judge are approved and adopted.
- 2) The motions to suppress are denied.
- 3) Trial of this matter for defendants Briasco and Traver is scheduled for:

Tuesday, June 1, 2010, at 9 a.m.

in Courtroom No. 5, Roman L. Hruska United States Courthouse, 111 South 18th Plaza, Omaha, Nebraska, or as soon thereafter as may be called by the Court. This will give the parties time to pursue plea negotiations or prepare for trial, and the ends of justice will be served by continuing this case and outweigh the interests of the public and the defendants in a speedy trial. The additional time between April 20, 2010, and June 1, 2010, shall be deemed excludable time in any computation of time under

the requirement of the Speedy Trial Act. 18 U.S.C.
§ 3161(h) (8) (A) & (B).

DATED this 20th day of April, 2010.

BY THE COURT:

/s/ Lyle E. Strom

LYLE E. STROM, Senior Judge
United States District Court